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OFFICE OF PETITIONS

In re Application of :
Lingman, et al. :
Application No. 10/708,213 :
Filed: February 17, 2004 :
Attorney Docket No. 00173.0050.PCUS00 :

ON PETITION

This is a decision on the petition under 37 CFR 1.181, filed January 10, 2006, requesting that the Office withdraw the holding of abandonment of the above-identified application.

The petition under 37 CFR 1.181 is **DISMISSED**.

Any further petition to revive the above-identified application must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. This is **not** final agency action within the meaning of 5 U.S.C. § 704.

This application was held abandoned for failure to respond in a timely manner to the non-final Office action, mailed July 8, 2004, which set forth an extendable 3 month period for reply. The Office contended that this application became abandoned on October 9, 2004 for failure to reply. A Notice of Abandonment was mailed on August 1, 2005.

Petitioners assert a reply was timely transmitted via facsimile to the Office on October 8, 2004. The Office has no record of receiving a reply. However, the copy of the "Certificate of Facsimile Transmission" affixed to the transmittal form submitted with the instant petition is itemized and contains a proper certificate of facsimile transmission citing an October 8, 2004 date of transmission.

Under 37 CFR 1.8(b), correspondence is considered timely filed if petitioners: supply (1) a copy of the previously transmitted correspondence with a signed certificate of transmission affixed thereto (2) a statement which attests on a personal knowledge basis to the previous timely transmission. A copy of the sending unit's report confirming transmission may be used to support this statement. Furthermore, under 37 CFR 1.8(c), the Office may require additional evidence to determine if the correspondence was timely filed.

Petitioners have not submitted a statement which attests on a personal knowledge basis to the previous timely transmission. In addition, please provide a statement explaining the October 8, 2004 e-mail from eFax.com to Daniel Hernandez.


Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop PETITION
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By hand: U.S. Patent and Trademark Office
Customer Service Window, Mail Stop Petition
Randolph Building
401 Dulany Street
Alexandria, VA 22314

By FAX: (571) 273-8300 - ATTN: Office of Petitions

Telephone inquiries pertaining to this matter may be directed to the undersigned at (571) 272-3230.


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